

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 651

Introduced by Christensen, 44.

Read first time January 21, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water resources; to amend section 2-3226.04,
2 Reissue Revised Statutes of Nebraska, and sections
3 2-3225, 2-3226.05, 2-3226.08, and 2-3226.09, Revised
4 Statutes Cumulative Supplement, 2008; to adopt the Water
5 Resources Revolving Loan Fund Act; to change provisions
6 relating to use of property tax and occupation tax
7 proceeds and river-flow enhancement bond proceeds as
8 prescribed; to provide duties for natural resources
9 districts; to harmonize provisions; and to repeal the
10 original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Water Resources Revolving Loan Fund Act.

3 Sec. 2. (1) The Legislature finds that:

4 (a) Ground water is one of the most valuable natural
5 resources in the state;

6 (b) An adequate supply of water is essential to the
7 general welfare of the citizens of this state and to the present
8 and future development of water resources in the state;

9 (c) Natural resources districts have the legal
10 authority to regulate certain activities and, except as otherwise
11 specifically provided by statute, as local entities are the
12 preferred regulators of activities which may contribute to ground
13 water management and river flow enhancement programs; and

14 (d) Given the impact of extended drought on areas of
15 the state, the economic prosperity and future well-being of the
16 state is advanced by providing economic assistance in the form of
17 creation of the Water Resources Revolving Loan Fund to alleviate
18 the adverse economic impact of regulatory decisions necessary
19 for management, protection, and conservation of limited water
20 resources.

21 (2) The Legislature recognizes:

22 (a) Its duty to define broad policy goals concerning
23 the utilization and management of water and to ensure local
24 implementation of those goals;

25 (b) The need to provide for orderly management systems

1 in areas where management of ground water is necessary to
2 achieve locally and regionally determined ground water management
3 objectives and where available data, evidence, or other information
4 indicates that present or potential ground water conditions,
5 including subirrigation conditions, require the designation of
6 areas with special regulation of development and use; and

7 (c) That the management, protection, and conservation of
8 water and the reasonable and beneficial use thereof are essential
9 to the economic prosperity and future well-being of the state and
10 that the public interest demands procedures for the implementation
11 of enhancement programs to conserve and protect water supplies
12 and to prevent the contamination or inefficient or improper use
13 thereof.

14 Sec. 3. For purposes of the Water Resources Revolving
15 Loan Fund Act:

16 (1) Commission means the Nebraska Natural Resources
17 Commission;

18 (2) Construction means any of the following:
19 Preliminary planning to determine the feasibility of a project,
20 including engineering, architectural, legal, fiscal, or economic
21 investigations or studies; preliminary actions including surveys,
22 designs, plans, working drawings, specifications, procedures,
23 or other necessary actions; or erection including building,
24 acquisition, alteration, remodeling, or improvement;

25 (3) Department means the Department of Natural Resources;

- 1 (4) Director means Director of Natural Resources;
2 (5) District means a natural resources district;
3 (6) Joint public agency means a joint public agency as
4 defined in section 13-2503 whose participating public agencies
5 consist only of qualified natural resources districts; and
6 (7) Project means any project authorized under section
7 2-3226.04.

8 Sec. 4. (1) The Water Resources Revolving Loan Fund is
9 created. The fund shall be held as a trust fund for the purposes
10 and uses described in the Water Resources Revolving Loan Fund Act.
11 The fund shall consist of federal grants, state appropriations,
12 repayments of principal and interest on loans, and other money
13 designated for the fund. Money in the fund available for investment
14 shall be invested by the state investment officer pursuant to
15 the Nebraska Capital Expansion Act and the Nebraska State Funds
16 Investment Act. Investment earnings shall be credited to the fund.

17 (2) Upon approval by the commission, the director may
18 make loans from the fund pursuant to the act and may conduct
19 activities related to financial administration of the fund.

20 (3) Upon approval by the commission, the department may
21 create or direct the creation of accounts within the fund as the
22 department determines appropriate and useful in administering the
23 fund and in providing for the security, investment, and repayment
24 of bonds.

25 (4) The Water Resources Revolving Loan Administration

1 Fund is created. Any funds available for administering loans
2 or fees collected pursuant to the Water Resources Revolving
3 Loan Fund Act shall be remitted to the State Treasurer for
4 credit to the Water Resources Revolving Loan Administration Fund.
5 The Water Resources Revolving Loan Administration Fund shall be
6 administered by the department. The Water Resources Revolving Loan
7 Administration Fund and assets thereof may be used to provide
8 for financing or refinancing obligations or fees related to the
9 Water Resources Revolving Loan Fund Act. The director may transfer
10 any money in the Water Resources Revolving Loan Administration
11 Fund to the Water Resources Revolving Loan Fund to meet the
12 financing requirements after financing or refinancing obligations
13 or fees are paid. Any money in the Water Resources Revolving Loan
14 Administration Fund available for investment shall be invested by
15 the state investment officer pursuant to the Nebraska Capital
16 Expansion Act and the Nebraska State Funds Investment Act.
17 Investment earnings shall be credited to the fund.

18 Sec. 5. (1) The department may make an interest-free
19 loan from the Water Resources Revolving Loan Fund for not more
20 than forty percent of the cost of a project to an applicant
21 which is a natural resources district or a joint public agency
22 if the applicant agrees to match the amount of the interest-free
23 loan with bonds, other financing, or other funding sources. The
24 department may make loans from the fund to eligible natural
25 resources districts or joint public agencies for project costs in

1 excess of forty percent, which loans shall bear interest at the
2 rate established by the commission. The maximum term of a loan
3 under this section shall be ten years, and not more than thirty
4 percent of the average annual balance in the fund may be used for
5 a single project. A loan under this section shall be repaid by
6 the district from any revenue source authorized by the Legislature.
7 The commission shall adopt and promulgate rules and regulations for
8 disbursement of funds and repayment terms for loans made under this
9 section.

10 Sec. 6. (1) A loan from the Water Resources Revolving
11 Loan Fund may be made to finance or refinance the costs of
12 a project, including, but not limited to, (1) acquisition of
13 water rights by purchase or lease in accordance with Chapter 46,
14 article 6, pertaining to ground water and Chapter 46, article 2,
15 pertaining to surface water, including storage water rights with
16 respect to a river or any of its tributaries, (2) acquisition by
17 purchase or lease or the administration and management, pursuant to
18 mutual agreement, of canals and other works, including reservoirs,
19 constructed for irrigation from a river or any of its tributaries,
20 (3) vegetation management, including, but not limited to, the
21 removal of invasive species in or near a river or any of its
22 tributaries, (4) augmentation of river flows consistent with the
23 authority granted under Chapter 2, article 32, and (5) development,
24 storage, or transportation of water or provision of, contracting
25 for, or furnishing of water for domestic purposes, agriculture,

1 manufacturing, and any and all other beneficial uses.

2 (2) A loan from the fund shall only be available to a
3 natural resources district or a joint public agency in connection
4 with a project which is to be owned, operated, or financed by the
5 natural resources district or by the joint public agency for the
6 benefit of its member natural resources districts. The department
7 shall give preference to natural resources districts which are
8 within, or joint public agencies whose member natural resources
9 districts are within, a river basin, subbasin, or reach which is
10 bound by an interstate compact or decree or a formal state contract
11 or agreement.

12 Sec. 7. (1) An applicant for a loan under the Water
13 Resources Revolving Loan Fund Act shall submit a written
14 application to the department on a form provided by the department.
15 The application shall include all information deemed necessary
16 by the department, including, but not limited to, the name and
17 location of the applicant, the project to be undertaken by the
18 applicant, and the amount of the loan requested by the applicant.
19 The department shall grant or deny the application within six
20 months after receiving an application.

21 (2) If the department grants the application, the
22 department and the applicant shall execute an agreement which shall
23 include, but need not be limited to, the identity of the recipient,
24 the amount of the loan, the interest rate, if any, on the loan, the
25 location and a description of the project to be funded with the

1 proceeds of the loan, the term of the loan, a repayment schedule,
2 any penalties for failure to make the required payments according
3 to the schedule, and any other terms and conditions of the loan
4 agreed upon between the department and the loan recipient.

5 (3) The loan recipient shall commence construction of
6 the project within six months after receipt of the loan. If the
7 loan recipient does not commence construction of the project within
8 such time period, it shall return the amount of such loan to the
9 department. The amount returned shall be remitted to the State
10 Treasurer for credit to the Water Resources Revolving Loan Fund.

11 Sec. 8. If a loan recipient fails to make any payment
12 pursuant to a loan agreement under the Water Resources Revolving
13 Loan Fund Act, the amount of such payment plus any interest and
14 penalty shall be deducted from the amount of state aid to which
15 the loan recipient or its member natural resources districts is
16 entitled under section 77-27,137.02 and any other aid program
17 administered by the commission. Such amount shall be paid directly
18 or transferred to the Water Resources Revolving Loan Fund.

19 Sec. 9. The commission shall have the following powers
20 and duties:

21 (1) The power to adopt and promulgate rules and
22 regulations to govern application procedures and requirements for
23 making loans under the Water Resources Revolving Loan Fund Act;

24 (2) The power to adopt an intended use plan which shall
25 include funding priorities. The commission shall give preference

1 to natural resources districts within a river basin, subbasin,
2 or reach determined by the department to be fully appropriated
3 pursuant to section 46-714 or designated as overappropriated
4 pursuant to section 46-713. The intended use plan shall be reviewed
5 annually by the commission;

6 (3) The power to establish interest rates to be charged
7 on loans. The system may allow discounted interest rates for
8 short-term loans;

9 (4) The power to set delinquency rates or fees for loans
10 that are not repaid on time;

11 (5) The power to create an administrative fee to be
12 assessed on a loan for the purpose of administering the Water
13 Resources Revolving Loan Fund Act; and

14 (6) The power to obligate the Water Resources Revolving
15 Loan Fund and the assets thereof, in whole or in part, to repay
16 with interest loans to or credits into such fund, including bonds,
17 the proceeds of which are credited to such fund.

18 Sec. 10. The department shall have the following powers
19 and duties:

20 (1) The power to establish a program to make loans
21 to natural resources districts or joint public agencies for
22 construction or modification of projects in accordance with the
23 Water Resources Revolving Loan Fund Act and the rules and
24 regulations adopted and promulgated pursuant to the act;

25 (2) If authorized by the commission, the power to execute

1 and deliver documents obligating the Water Resources Revolving Loan
2 Fund and the assets thereof to the extent permitted to repay, with
3 interest, loans to or credits into such fund;

4 (3) The duty to prepare an annual report for the Governor
5 and the Legislature;

6 (4) The duty to establish fiscal controls and accounting
7 procedures sufficient to assure proper accounting during
8 appropriate accounting periods, including the following:

9 (a) Accounting for payments or deposits credited to the
10 fund;

11 (b) Accounting for disbursements from the fund; and

12 (c) Balancing the fund at the beginning and end of the
13 accounting period;

14 (5) The power to provide financial assistance, consistent
15 with the Water Resources Revolving Loan Fund Act, for completion
16 of engineering studies, research projects, preliminary engineering
17 reports, water protection, and other studies for the uses described
18 in section 9 of this act; and

19 (6) Such other powers as may be necessary and appropriate
20 for the exercise of its duties under the act.

21 Sec. 11. (1) If funds are loaned to or otherwise credited
22 to the Water Resources Revolving Loan Fund with an obligation to
23 repay such loan or credit, the obligation to repay the amount
24 of the loan or credit and the interest thereon shall, upon
25 authorization by the commission and execution and delivery by the

1 department of an agreement to repay the loan or credit, be a valid
2 and binding obligation of such fund or portions thereof and payable
3 in accordance with the terms of the agreement executed by the
4 department.

5 (2) Any pledge of the Water Resources Revolving Loan Fund
6 or any part thereof or any pledge of the assets of such fund made
7 by the department as authorized by the commission shall be valid
8 and binding from the time the pledge is made. The revenue, money,
9 or assets so pledged shall immediately be subject to a lien of
10 such pledge without any physical delivery thereof or further act,
11 and the lien shall be valid and binding as against all parties
12 having claims of any kind in tort, contract, or otherwise against
13 such fund or the assets thereof regardless of whether the parties
14 have notice of the lien. Neither the action by the commission,
15 the pledge agreement executed by the department, nor any other
16 instrument by which a pledge is created need be recorded.

17 Sec. 12. At the end of the first calendar month following
18 the effective date of this act, the State Treasurer shall transfer
19 any funds remaining in the Water Contingency Cash Fund created
20 under section 2-3226.07 to the Water Resources Revolving Loan
21 Fund. On and after the effective date of this act, any payments
22 made by natural resources districts pursuant to section 2-3226.07,
23 2-3226.08, or 2-3226.09 shall be remitted to the State Treasurer
24 for credit to the Water Resources Revolving Loan Fund.

25 Sec. 13. Section 2-3225, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 2-3225 (1)(a) Each district shall have the power and
3 authority to levy a tax of not to exceed four and one-half cents
4 on each one hundred dollars of taxable valuation annually on all of
5 the taxable property within such district unless a higher levy is
6 authorized pursuant to section 77-3444.

7 (b) Each district shall also have the power and authority
8 to levy a tax equal to the dollar amount by which its restricted
9 funds budgeted to administer and implement ground water management
10 activities and integrated management activities under the Nebraska
11 Ground Water Management and Protection Act exceed its restricted
12 funds budgeted to administer and implement ground water management
13 activities and integrated management activities for FY2003-04, not
14 to exceed one cent on each one hundred dollars of taxable valuation
15 annually on all of the taxable property within the district.

16 (c) In addition to the power and authority granted in
17 subdivisions (1)(a) and (b) of this section, each district located
18 in a river basin, subbasin, or reach that has been determined
19 to be fully appropriated pursuant to section 46-714 or designated
20 overappropriated pursuant to section 46-713 by the Department of
21 Natural Resources shall also have the power and authority to
22 levy a tax equal to the dollar amount by which its restricted
23 funds budgeted to administer and implement ground water management
24 activities and integrated management activities under the Nebraska
25 Ground Water Management and Protection Act exceed its restricted

1 funds budgeted to administer and implement ground water management
2 activities and integrated management activities for FY2005-06, not
3 to exceed three cents on each one hundred dollars of taxable
4 valuation on all of the taxable property within the district for
5 fiscal year 2006-07 and each fiscal year thereafter through fiscal
6 year 2011-12.

7 (d) In addition to the power and authority granted in
8 subdivisions (a) through (c) of this subsection, a district with
9 jurisdiction that includes a river subject to an interstate compact
10 among three or more states and that also includes one or more
11 irrigation districts within the compact river basin may annually
12 levy a tax not to exceed ten cents per one hundred dollars
13 of taxable valuation of all taxable property in the district.
14 The proceeds of such tax may be used for (i) the payment of
15 principal and interest on bonds and refunding bonds issued pursuant
16 to section 2-3226.01, (ii) ~~or~~ ~~for~~ the repayment of financial
17 assistance received by the district pursuant to section 2-3226.07,
18 (iii) payment of all or any part of the costs and expenses of one
19 or more qualified projects described in section 2-3226.04, or (iv)
20 payment of all or any part of the costs and expenses of one or
21 more projects authorized under the Water Resources Revolving Loan
22 Fund Act. Such levy is not includable in the computation of other
23 limitations upon the district's tax levy.

24 (2) The proceeds of the tax levies authorized in
25 subdivisions (1)(a) through (c) of this section shall be used,

1 together with any other funds which the district may receive from
2 any source, for the operation of the district and for the purpose
3 of paying all or any part of the costs and expenses of one or
4 more qualified projects authorized pursuant to the act or section
5 2-3226.04. When adopted by the board, the tax levies authorized in
6 subdivisions (1)(a) through (d) of this section shall be certified
7 by the secretary to the county clerk of each county which in whole
8 or in part is included within the district. Such levy shall be
9 handled by the counties in the same manner as other levies, and
10 proceeds shall be remitted to the district treasurer. Such levy
11 shall not be considered a part of the general county levy and shall
12 not be considered in connection with any limitation on levies of
13 such counties.

14 Sec. 14. Section 2-3226.04, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 2-3226.04 The proceeds of bonds issued pursuant to
17 section 2-3226.01 shall only be used to pay or refinance the
18 costs of (1) acquisition by purchase or lease of water rights
19 in accordance with Chapter 46, article 6, pertaining to ground
20 water, and Chapter 46, article 2, pertaining to surface water,
21 including storage water rights with respect to a river or any
22 of its tributaries, (2) acquisition by purchase or lease or the
23 administration and management, pursuant to mutual agreement, of
24 canals and other works, including reservoirs, constructed for
25 irrigation from a river or any of its tributaries, (3) vegetation

1 management, including, but not limited to, the removal of invasive
2 species in or near a river or any of its tributaries, and (4)
3 the augmentation of river flows consistent with the authority
4 granted under Chapter 2, article 32, and (5) development, storage,
5 transportation, provision of, contracting for, and furnishing of
6 water for domestic purposes, agriculture, manufacturing, and any
7 and all other beneficial uses.

8 Sec. 15. Section 2-3226.05, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 2-3226.05 (1) The district may levy an occupation tax
11 upon the activity of irrigation of agricultural lands within
12 such district on an annual basis, not to exceed ten dollars per
13 irrigated acre, the proceeds of which may be used for ~~the purpose~~
14 ~~of~~ (a) repaying principal and interest on any bonds or refunding
15 bonds issued pursuant to section 2-3226.01 for one or more projects
16 under section 2-3226.04, (b) ~~or~~ ~~for~~ the repayment of financial
17 assistance received by the district pursuant to section 2-3226.07,
18 (c) payment of all or any part of the costs and expenses of one
19 or more qualified projects described in section 2-3226.04, or (d)
20 payment of all or any part of the costs and expenses of one or more
21 projects authorized pursuant to the Water Resources Revolving Loan
22 Fund Act.

23 (2) Acres classified by the county assessor as irrigated
24 shall be subject to such district's occupation tax unless, on or
25 before July 1, 2007, and on or before March 1 in each subsequent

1 year, the record owner certifies to the district the nonirrigation
2 status of such acres.

3 (3) Any such occupation tax shall remain in effect so
4 long as the district has bonds outstanding which have been issued
5 stating such occupation tax as an available source for payment and
6 for the purpose of paying all or any part of the costs and expenses
7 of one or more projects authorized pursuant to the act or section
8 2-3226.04.

9 (4) Such occupation taxes shall be certified to,
10 collected by, and accounted for by the county treasurer at the
11 same time and in the same manner as general real estate taxes,
12 and such occupation taxes shall be and remain a perpetual lien
13 against such real estate until paid. Such occupation taxes shall
14 become delinquent at the same time and in the same manner as
15 general real property taxes. The county treasurer shall publish and
16 post a list of delinquent occupation taxes with the list of real
17 property subject to sale for delinquent property taxes provided
18 for in section 77-1804. In addition, the list shall be provided to
19 natural resources districts which levied the delinquent occupation
20 taxes. The list shall include the record owner's name, the parcel
21 identification number, and the amount of delinquent occupation tax.
22 For services rendered in the collection of the occupation tax, the
23 county treasurer shall receive the fee provided for collection of
24 general natural resources district money under section 33-114.

25 (5) Such lien shall be inferior only to general taxes

1 levied by political subdivisions of the state. When such occupation
2 taxes have become delinquent and the real property on which the
3 irrigation took place has not been offered at any tax sale, the
4 district may proceed in district court in the county in which the
5 real estate is situated to foreclose in its own name the lien
6 in the same manner and with like effect as a foreclosure of a
7 real estate mortgage, except that sections 77-1903 to 77-1917 shall
8 govern when applicable.

9 Sec. 16. Section 2-3226.08, Revised Statutes Cumulative
10 Supplement, 2008, is amended to read:

11 2-3226.08 (1) Any district receiving financial assistance
12 pursuant to section 2-3226.07 shall remit to the department the
13 proceeds of the property tax authorized pursuant to subdivision
14 (1)(d) of section 2-3225, the proceeds of the occupation tax
15 authorized pursuant to section 2-3226.05, or both, when such
16 proceeds are available for distribution until the amount of such
17 financial assistance has been repaid. Such proceeds shall be
18 remitted within fifteen days after receipt of the proceeds by the
19 district.

20 (2) If the district does not receive proceeds described
21 in subsection (1) of this section, the district shall reimburse the
22 Water Contingency Cash Fund by such means as are provided by the
23 Legislature. Such reimbursement shall be made no later than June
24 30, 2013.

25 (3) After the financial assistance described in

1 subsection (1) of this section has been repaid, any district
2 receiving all or part of any loan proceeds pursuant to the Water
3 Resources Revolving Loan Fund Act shall remit to the department the
4 loan proceeds pursuant to the loan agreement under sections 5 and
5 6 of this act.

6 Sec. 17. Section 2-3226.09, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 2-3226.09 The department shall remit reimbursements
9 received pursuant to subsection (1) of section 2-3226.08 to the
10 State Treasurer for credit to the Water Contingency Cash Fund.
11 The department shall remit reimbursements received pursuant to
12 subsection (3) of section 2-3226.08 to the State Treasurer for
13 credit to the Water Resources Revolving Loan Fund. The department
14 shall calculate the amount of such reimbursements so remitted.
15 After the initial disbursement of financial assistance by the
16 department as authorized in section 2-3226.07, the State Treasurer
17 shall, at the end of each calendar month, transfer the balance of
18 the Water Contingency Cash Fund to the ~~Cash Reserve Fund.~~ Water
19 Resources Revolving Loan Fund.

20 Sec. 18. Original section 2-3226.04, Reissue Revised
21 Statutes of Nebraska, and sections 2-3225, 2-3226.05, 2-3226.08,
22 and 2-3226.09, Revised Statutes Cumulative Supplement, 2008, are
23 repealed.